

Charities Act 2006

What trustees need to know

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A. Foreword

Welcome to our essential guide, which summarises what trustees need to know about the new Charities Act 2006.

Charities themselves have been central partners in shaping the Charities Act 2006 – from initial suggestions, to the review in 2001, to the final stages of parliamentary debate. The result is a set of changes that aims to make life simpler for trustees, modernises the definition of charity, and provides new safeguards to uphold public trust in the charitable sector.

First, the Act aims to provide trustees with more flexibility and less bureaucracy – particularly smaller charities. It offers new, easier ways for charities to make changes to their purposes, structures and administration. There are new provisions for transferring assets, winding up, changing objects and merging. Before, charities that wanted the benefits of incorporation had to face two sets of regulation, as both a charity and a company. Now, there is a new legal structure specifically for charities – the Charitable Incorporated Organisation (CIO).

Second, the Act modernises the definition of ‘charitable purposes’, bringing it up to date to reflect how charity has evolved and developed over many years. All purposes that were recognised as charitable before the Act are covered by the new definition. The Act ensures that the test of ‘public benefit’ remains a cornerstone of charity, underlining the requirement that all charities must be for the benefit of the public. It also addresses the need to make the public aware of the ways in which charities deliver public benefit, and charges the Charity Commission with making sure this happens.

Third, the Act protects public trust. Confidence in charity is vital, and it is something we cannot take for granted. The Act strengthens the charity sector’s accountability and transparency. It will bring around 13,000 larger charities, which were previously exempt or excepted, onto the register of charities. It thereby ensures that these charities are regarded in the same way as other charities.

The Commission itself has been given updated objectives and powers to support its role as a modern and effective regulator. It will be cheaper and easier for charities to challenge the Commission’s decisions through the Charity Tribunal. As well

as improving the Commission's accountability, this will help charity law develop more flexibly over time.

We hope this guide clearly explains the changes made by the Charities Act 2006 and that it provides the information trustees need to identify the opportunities available now, and in the future.

ED MILIBAND MP
Minister for the Third Sector

DAME SUZI LEATHER
Chair, Charity Commission

B. Guide to the booklet

B1. Why this booklet?

The Charities Act 2006 – called simply ‘the Act’ in this booklet – was passed by Parliament in November 2006 but did not come into force immediately. Some parts of the Act came into force on 27 February 2007. Most of the rest will come into force by early 2008. The booklet gives trustees an overview of the Act, and is mainly for those whose charities have an income of less than £500,000 a year. However, it may also interest the trustees, employees, volunteers and advisers of all charities.

B2. Scope of the booklet

The booklet covers a wide range of topics about charities in England and Wales, their trustees and the Charity Commission. Our short explanations are accurate, but they aim to highlight the main changes introduced by the Act and help you find out which ones will or may affect your charity. The Act deals with complex legal matters. To be clear about any next steps that you may need to take and when to take them, please seek further guidance.

B3. Who has written the booklet?

The booklet comes from the Office of the Third Sector and the Charity Commission.

The Office of the Third Sector is part of the Cabinet Office. It advances and develops the role of the third sector, and its responsibilities include the reform of charity law. The Charity Commission (usually called simply ‘the Commission’ in this booklet) is the independent regulator of charities in England and Wales. The Commission’s aims include improving charities’ effectiveness and increasing public confidence and trust in charities.

B4. Using the booklet

To get a flavour of the main changes at a glance, turn to section C. Sections D to I give more detail. Under each heading, we mention significant changes introduced by the Act which will interest you as a trustee. Individual provisions of the Act will come into force at different times. Some have started already, while others need consultation, regulations to be made, and guidance to be published. You can generally find more information about the next steps at the end of each section of the booklet, as well as details of what further guidance is available now from the Commission's website. Progress updates will also be posted on the websites of the Office of the Third Sector and the Commission (see the Appendix for details). The online version of this booklet will be updated from time to time, and will be available on both of these websites.

The headings within the sections alert you to the broad areas affected by the Act. Generally we give a concise summary of what has changed ('The short answer' or 'In brief') and then give more background ('In more detail').

We have arranged the booklet to fit the way you work, so the changes most likely to affect your routine work are near the start. In a few places there are technical words that may not be familiar to all readers. The glossary in section J explains them.

C. Summary for trustees of smaller charities

Some of the Act's provisions may seem modest, but together they will have a positive impact on the work and efficiency of your charity. They will apply whatever the type and size of your charity, and will help a diverse sector to flourish. In writing this guidance, the Office of the Third Sector and the Commission have been particularly mindful of your needs.

This booklet will guide you through what has changed in key areas such as definitions, financial thresholds and trustees' individual duties.

C1. Introduction

Small charities make up the largest part of the sector. Many of the Act's provisions should benefit your work and efficiency. Below we list some key benefits for you, and give pointers as to where to read more.

C2. Effective administration

Nobody likes red tape. For some significant areas, the need for consent from the Commission has been removed (see in particular sections E and F):

- You will only have to register with the Commission if your annual income is over £5,000 (see D2).
- Smaller, unincorporated charities will be able to take certain actions without the Commission's permission (for example changing your purposes or transferring assets).
- It will be easier to change your governing documents.
- Trustees can act with less bureaucracy (and perhaps less anxiety) than in the past. For example, look at what's changed on personal liability and indemnity insurance, remuneration or fundraising.

C3. Development and growth

In terms of your charity's development, the Act allows you to adapt more quickly to the social and economic circumstances around you. In particular, it introduces:

- new powers for unincorporated charities to transfer property, spend from endowment funds or mortgage their land;

- an easier way to transfer legacies and donations when charities merge (see H3); and
- a new legal structure for incorporated charities with limited liability, to avoid dual regulation by the Commission and Companies House (see D4).

C4. Building public confidence

The spirit of the Act is that charities need to be clear about how they benefit the public. Much of the legal framework for charities has been developed by the courts over several centuries. The Act provides greater clarity and stronger emphasis on the delivery of public benefit (see D1).

C5. Grey areas

The Commission can help clarify some grey areas that may hold you back. It can give general advice and guidance and has new powers to give directions on donated property and gifts or to rule on the membership of a charity (see G1).

C6. When things go wrong

Occasionally, the Commission needs to open an inquiry into a charity's activities. Where there are serious problems, the Commission's powers have been enhanced (see G2 and G3). The Act also introduces a Charity Tribunal to hear appeals against Commission decisions (see H7).

D. The big changes for your charity

The Act aims to help you and the Commission deal with straightforward matters more quickly and efficiently. We are aware of the need to protect charities – in particular smaller organisations – from too much bureaucracy. We want them to be free to use their resources for their beneficiaries and develop and grow easily. The Act introduces a new legal structure for charities, and requires charities to be clear about how they benefit the public.

D1. What is a charity? Charitable purposes and public benefit

The short answer

The Act defines a charity as a 'body or trust which is for a charitable purpose that provides benefit to the public'. It lists 13 charitable purposes, and any charity must have purposes falling within that list.

The purposes (or aims) of a charity are usually set out in its own governing document. Before the Act, there were four types of charitable purpose (known as 'heads'). These were the relief of poverty; the advancement of education; the advancement of religion; and other purposes for the benefit of the community. Before the Act, charities relieving poverty or advancing education or religion were presumed to benefit the public. The Act removes that presumption and all charities will have to be able to demonstrate how their purposes benefit the public.

In more detail

The legal position: How the law understands 'charitable purposes' has developed over several centuries. For example, charitable purposes are described in the preamble to the Charitable Uses Act 1601. Purposes considered charitable today are based either on those original ones or on other purposes already established by the courts to be like them. The range of charities that exists now has clearly evolved considerably since the seventeenth century. By listing these established purposes, the Act updates the scope of charitable aims for a modern society and gives a much clearer idea of what is considered as being 'for charity'.

Charitable purposes: The new list has 12 specific headings and one general heading. This last general heading keeps within the scope of charity everything which is currently

charitable but which may not be covered by any of the 12 specific headings. In that way, all 13 headings together cover everything that is charitable. The list is:

- the prevention or relief of poverty;
- the advancement of education;
- the advancement of religion;
- the advancement of health or the saving of lives;
- the advancement of citizenship or community development;
- the advancement of the arts, culture, heritage or science;
- the advancement of amateur sport;
- the advancement of human rights, conflict resolution or reconciliation, or the promotion of religious or racial harmony or equality and diversity;
- the advancement of environmental protection or improvement;
- the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
- the advancement of animal welfare;
- the promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services; and
- other purposes that are currently recognised as charitable or are in the spirit of any purposes currently recognised as charitable.

This last heading encompasses many established charitable purposes, for example relief of unemployment, promotion of moral and spiritual welfare, rehabilitation of offenders, and others. It also covers any purposes that might be recognised as charitable in the future. Charities covered by the thirteenth

general heading are treated the same in terms of regulation or tax as charities covered by the other specific headings.

The public benefit requirement: All charities must have purposes that benefit the public. The Act strengthens this obligation by requiring that all – and not just some – organisations on the register of charities must be able to demonstrate this. All charities seeking registration in the future must provide evidence that their purpose will be for the public benefit. Some existing charities may also be asked to demonstrate how they meet this test.

Developing the law on public benefit: The meaning of ‘public benefit’ is not always straightforward. The Commission will have to assess, for example, what the benefits are, who will benefit and whether that is sufficient given the purposes the charity is set up to achieve. As with the law on charitable purposes, the law on public benefit will continue to evolve and develop. It will alter in response to the social and economic context within which charities operate and in response to decisions by the Commission, the proposed Charity Tribunal (see H7) and the courts.

The Commission’s role: One of the Commission’s new objectives is to promote understanding and awareness of the public benefit requirement (see I1). To help meet this objective, the Commission has already started consultation and has published some draft guidance on its website, setting out its proposed approach. After consultation, the Commission will carry out public benefit checks on existing charities.

Trustees’ role: You are not legally obliged to follow the guidance but you must have regard to it when it is relevant to your charity.

The public benefit requirement and the provisions on charitable purposes will come into force in early 2008.

Further information on the Commission's website:

- *Consultation on draft public benefit guidance*
- *Commentary on the descriptions of charitable purposes in the Charities Act 2006*

D2. Registration

In brief

Generally, only charities with an annual income above £5,000 must register with the Commission. This threshold has gone up from its previous level of £1,000. The registration requirements for 'exempt' and 'excepted' charities will also change and are set out elsewhere in this booklet (see H1).

In more detail

The increase to the registration threshold means that most charities with an annual income of £5,000 or less do not have to register. There used to be a requirement that a charity must register (regardless of the level of its income) if it possessed a permanent endowment, or used or occupied land. That is now gone. But all charities that opt for the new status of Charitable Incorporated Organisation (see D4) must register with the Commission, regardless of their income.

Purpose of the change: The Act will save time (and, in many cases, money) for several thousand small charities by releasing them from the duties of registration and of maintaining their registered details. Smaller charities will thus be released from several compliance obligations, while continuing to benefit from charitable status.

This provision came into force on 23 April 2007.

Voluntary registration: The Commission does not usually register any charity that is below the threshold for compulsory registration. Eventually, under changes in the Act, these small charities will have a right to register voluntarily, but this right has not yet come into force. However, the Commission recognises that some charities have a particular need to be registered so in the interim will consider their requests on a case-by-case basis.

The right to voluntary registration is delayed so that the Commission can deal with other work resulting from the Act. We do not expect it to come into force until the Commission has dealt with changes to registration affecting excepted and exempt charities, and it is unlikely to happen before 2009.

Deregistering: Existing registered charities with an annual income below the £5,000 threshold can ask to be removed from the register, but they will still remain charities and will have to abide by charity law. The Commission will produce guidance on this in due course.

Further information on the Commission's website:

- *Registering as a charity*
- *Removal of organisations from the register*

D3. Audit, accounts and annual returns

In brief

The thresholds for requiring an audit and examination of charity accounts will in general be raised. There will be similar thresholds for charities that are companies and those that are not. Most charities with an annual income below £500,000 will not need to have their accounts professionally audited. Other audit thresholds depend on levels of assets or annual income or

both, on whether the charity is a company or not, and (for groups) on the level of group income.

As happened before the Act, trustees of every registered charity with an annual income of more than £10,000 must submit an annual return, with the charity's accounts and annual report, to the Charity Commission. The Act has removed expenditure as a criterion for deciding whether an annual return must be submitted, and will change the offence of failure to submit the return.

In more detail: charities that are not companies

For financial years starting on or after 27 February 2007:

A charity that is not a company must have a professional audit of its accounts if the following thresholds apply:

- its gross annual income is above £500,000; or
- it has an annual income over £100,000 and assets exceeding £2.8 million;

or, regardless of these thresholds, if:

- its governing document states that it must have a professional audit; or
- the Commission orders the accounts of the charity to be professionally audited.

The general position is that only auditors who are registered and regulated by a recognised supervisory body (and therefore 'professional') can audit a charity's accounts.

For unincorporated charities that are not required to have a professional audit:

- If the charity's annual income is above £10,000, its accounts require independent examination.

- If its annual income is above £250,000, then the independent examiner must be a member of a professional body named in the Act.
- Charities with an annual income of £10,000 or less must still prepare accounts and have them available on request.

In more detail: charities that are companies

What happens to charitable companies with levels of assets or income below the audit thresholds?

- A charitable company with an annual income of between £90,000 and £500,000 and assets of £2.8 million or less must have an accountant's report.
- A charitable company with an annual income of £90,000 or less needs neither a professional audit nor an accountant's report, unless its assets are more than £2.8 million.

What is the audit threshold for charitable companies?

- A charitable company with an annual income of more than £500,000 or assets of more than £2.8 million must have a professional audit.

The provisions have come into force for financial years starting on or after 27 February 2007. Further changes will create a single audit framework for all charities, whether or not they are companies. These changes are due later in 2007 or in early 2008.

In more detail: annual returns

All registered charities that have to submit annual returns to the Commission must do so within 10 months of the end of the charity's financial year. Previously, trustees of such charities who persistently failed to submit annual returns, annual reports or accounts to the Commission could be convicted of an

offence and fined. The Act changes the definition of the offence to apply to any trustees who fail to send in one or more of these documents, whether or not the failure is persistent, and increases the penalty for that offence. Trustees will not commit an offence if they can show that they have taken all reasonable steps to meet the deadline.

There used to be a similar offence for trustees who persistently failed to comply with a request from any person for a copy of the accounts. This has been extended to cover requests for a copy of the most recent annual report as well. Charities with an annual income of less than £10,000 must comply with requests for copies of their accounts but are not required to submit an annual return to the Commission or to provide an annual report.

When will the provisions come into force? The changes to the penalty for the offence of failing to submit an annual return, accounts or annual report on time will apply to all those that are due on or after 1 April 2008. It will also apply from the same date to trustees who fail to meet requests for accounts and annual reports.

In more detail: group accounts by a parent (or 'main') charity

Where a charity is part of a group of organisations, the preparation of group accounts has been accepted as good practice in the sector. However, it has not been a legal requirement. The Act will make it a legal requirement for a parent charity to provide group accounts for itself and the subsidiaries under its control, where the combined income or assets of the group are above a certain threshold.

These provisions will be introduced after consultation with the sector in 2007 and are expected to come into force later in 2007 or early in 2008 for the financial years starting after then. Further regulations are needed to set out in detail the

thresholds at which group accounts will be required, what they will contain and how they will be audited.

Whistleblowing

The auditors of unincorporated charities currently have a specific duty to report abuse or significant breaches of charity law to the Commission. They already have statutory protection against legal action for breach of confidence or defamation where they do so. The new Act recognises that duty and extends both the duty and the associated protection to auditors of unincorporated charities' and charitable companies' accounts, as well as to reporting accountants and independent examiners of charity accounts.

The provisions will come into force later in 2007, although the duty and the protection relating to whistleblowing will apply retrospectively to matters arising before this date.

Further information on the Commission's website:

- *Annual Return*
- *Statement of Recommended Practice: accounting and reporting by charities*
- *Charity reporting and accounting: the essentials*

D4. The Charitable Incorporated Organisation (CIO) – a new structure for charities

In brief

The CIO will be the first legal structure created specifically to meet the needs of charities and available exclusively to charities. As with a company, it will have the benefits of incorporation, which are the creation of a 'legal personality' for the charity and limited liability for trustees. However, CIOs will

need neither separate registration with Companies House nor regulation under company law. A CIO will be a corporate body with a constitution, and will be registered with and regulated by the Commission.

The CIO will not be suitable for all types of charity, and trustees should take professional advice if they are considering setting up a new charity as a CIO or would like to change an existing charity into the new structure.

In more detail

Why the CIO is needed: There are two main types of structure of charity – unincorporated and incorporated – but there is no structure for legal incorporation specifically for charities.

At present, charities that want the advantages of incorporation must register as companies. Charitable companies have the burden of registering with and reporting to both Companies House and the Commission, and must follow both charity law requirements and company law requirements. The CIO will help charities to obtain the benefits of incorporation without having to undergo dual registration and regulation.

What will be the advantages of CIOs over charitable companies?

- **Single registration.** A charitable company has to register with Companies House and with the Commission. The CIO will only need to register with the Commission.

- **Less onerous requirements when preparing accounts.**

Small CIOs will be able to prepare receipts and payments accounts; larger ones will prepare standard Charities Act accruals accounts. All charitable companies, regardless of size, have to prepare accruals accounts (a balance sheet, a

statement of financial activities and notes) that meet the general requirements of company law.

- **Less onerous reporting requirements.** CIOs will only have to prepare an annual report under the Charities Act. Charitable companies have to prepare a report to meet the requirements of the Companies Acts as well as the Charities Act.
- **Only one annual return.** Charitable companies have to prepare an annual return under company law, and most must also submit a separate annual return under charity law.
- **Less onerous filing requirements.** CIOs will only have to send accounts/reports/returns to the Commission. Charitable companies have to send them to both the Commission and Companies House.
- **Less onerous requirements relating to the reporting of constitutional and governance changes.** CIOs will be subject to fewer reporting requirements than charitable companies, and will only have to report to the Commission, rather than to both the Commission and Companies House.
- **Lower costs.** The Commission, unlike Companies House, does not make any charges for registration or for filing of information.
- **Simpler and more flexible constitutional forms.** Because CIOs will not be sharing a framework with commercial bodies, it will be possible to create simpler and more flexible governing documents that specifically meet charities' needs.
- **More straightforward merger arrangements.** These are not available to charitable companies.

How to become a CIO: Trustees should first consider whether the CIO would provide an appropriate legal entity for their charity. Anyone wanting to set up a charity will be able to make use of the CIO. Applicants will need to register with the Commission a copy of their proposed constitution and any other documents the Commission might request of them. The Act

also makes conversion of an existing charity into a CIO as straightforward as possible. This can be done by converting an existing charitable company into a CIO or transferring the assets of an existing unincorporated charity to a CIO. An exempt charity cannot be a CIO.

When CIO status might be refused: The Commission will be able to refuse an applicant if:

- the CIO is not being established exclusively for charitable purposes;
- its constitution does not otherwise conform with the Act or regulations made following the Act; or
- the proposed name of the CIO is the same as or too similar to that of another charity or is misleading or offensive.

What needs to happen next: The new legal framework for the CIO still requires secondary legislation in the form of regulations to be made by the Minister for the Cabinet Office. The regulations will set out more detail on how CIOs will be established and will operate. The Office of the Third Sector will consult in 2007 on the regulations that will be required, and the new framework is expected to come into force in early 2008. It is likely that various model constitutions will be prepared for CIOs. Information will be available on the Commission's website.

E. Less red tape

The Act is deregulatory in spirit, allowing charities to modernise and giving them greater flexibility to fulfil their purposes more effectively.

E1. Changing your purposes

In brief

If you are the trustee of a smaller unincorporated charity, with a gross income in your last financial year of no more than £10,000, the Act makes it easier for you to update your charitable purposes. Provided that the new purposes are similar to the original purposes, you do not need to ask the Commission to make a 'Scheme' to change them.

In more detail

The rules: Where the trustees of a charity consider that their existing charitable purposes are no longer relevant in modern society, they may bring them up to date more simply. The updated purposes must serve the charity's interests well and must be similar to the old ones. So, for example, a charity set up to relieve sickness could update its purposes to take part in a health promotion scheme to promote healthy living.

Voting: The trustees must satisfy themselves that the change is in the charity's interests and that (so far as is reasonably practicable) the new purposes consist of or include purposes similar to those being replaced. The trustees must pass a resolution by at least two-thirds of those who vote, and send a copy to the Commission with the reasons for passing the resolution.

Timescale: The resolution automatically takes effect 60 days after receipt by the Commission, unless the Commission objects. However, this period can be extended if the Commission requires the resolution to be publicly announced, or requests more information. In practice, the Commission is only likely to object where the new purposes very clearly do not serve the charity's interests well, or are dissimilar to the old ones.

Next steps: The Commission will be providing more detailed guidance and a form of resolution. Trustees should, however, consider the need to take legal or other expert advice on any changes they wish to make to the purposes of their charity.

The provisions will come into force in early 2008.

E2. Altering your governing document

In brief

If you represent an unincorporated charity, you may now change the ‘administrative powers and procedures’ – the parts of your governing document that concern the general running and administration of your charity – without the Commission’s prior approval.

If your charity is a company, you can already make certain changes to your governing document without obtaining the Commission’s prior approval. The Act makes it easier for charities that wish to make such changes.

In more detail: unincorporated charities

Administrative powers and procedures: These are the parts of a charity’s governing document concerning the general running and administration of the charity and the work of its trustees. An example might be the number of trustees needed to form a quorum at meetings. The Act updates and extends existing rules to make it easier for any unincorporated charity to modify its powers or procedures. Trustees of all unincorporated charities can use this power, although they can choose to use instead any equivalent power in the charity’s governing document.

Safeguards: This updated power retains an important safeguard for charities that are unincorporated associations

with a body of members distinct from the trustees. For these charities, the members of the charity must hold a meeting to approve a resolution of the trustees. At that meeting, the resolution must be approved by a two-thirds majority on a vote or by a decision taken without a vote and without any expression of dissent.

Trustees must also remember to keep the Commission register entry for their charity up to date with any changes made to their governing documents under this power.

The provisions came into force on 27 February 2007.

Further information on the Commission's website:

- *Unincorporated charities: amendments to governing documents – guidance for trustees*
- *Orders and Schemes*

In more detail: charitable companies

Speeding up the process: Charitable companies wishing to change their governing document must follow the requirements set out in that document, and the requirements of the Companies Acts. However, they will need the Commission's consent only for specific amendments that concern the essential character of the charity. These are amendments to:

- the objects of the charity in its governing document;
- any provision in its governing document which deals with what happens to property on the dissolution of the company; and
- any provision in its governing document where the amendment would authorise any benefit to the directors or members, or to other people connected to them.

The provisions come into force later in 2007 or in early 2008.

F. What has changed for the individual trustee?

This section looks at what changes the Act brings for individual trustees.

F1. Is the role of trustee still a voluntary one?

The short answer

In general, yes. The Act does, however, allow for trustees to be paid for providing goods or services to a charity if certain conditions are satisfied. This is not payment for being a trustee or for any type of contractual employment within the charity.

In more detail

The benefits: Charity trustees, or those connected to them, may receive payment more easily for providing goods or services to the charity where there is a clear benefit to the charity. This could include, for example, legal work, plumbing or electrical services.

The rules: Charities will be able to pay their trustees for providing goods or services as long as:

- the terms are set out in a written agreement;
- the amount is reasonable given the services provided by that person;
- the trustees are satisfied that the arrangement is in the best interests of the charity – this will usually mean that it will save the charity money or provide a better quality service;
- if more than one trustee is being paid, the benefiting trustees are a minority of the charity's trustees;
- the governing documents of the charity do not contain anything that might prohibit the relevant person from receiving that pay; and
- trustees who stand to benefit take no part in any decision about the agreement.

Safeguards: There are additional safeguards to prevent misuse of the power. One is the duty to have regard to the Commission's guidance; the other is the requirement to act in accordance with the duty of care set out in the Trustee Act 2000. The duty of care states that a trustee '...must exercise such care and skill as is reasonable in the circumstances, having regard in particular:

- a) to any special knowledge or experience that he has or holds himself out as having, and
- b) if he acts as trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.'

Guidance: Charities proposing to pay their trustees should refer to the Commission's guidance on the subject, which will be available on its website. They should also consider whether it would be appropriate to seek professional advice.

The provisions will come into force in early 2008.

F2. Trustee liabilities

In brief

We know that personal liability causes worry for existing and potential trustees, even though it is rare for a trustee to suffer actual financial loss. The Act grants the Commission a new power to relieve trustees from personal liability for breach of trust or duty where they have acted honestly and reasonably and ought fairly to be excused.

The Act also recognises that it is reasonable for charities to buy trustee indemnity insurance, and removes most of the obstacles to this. Trustees may pay the premiums with the charity's money, subject to certain limitations and conditions.

In more detail: personal liability

When charities run into problems, trustees may be personally liable for any resulting debts or losses. To date, the Commission has not been able to give trustees any firm assurance that they will not be held liable, as only the courts can give this assurance. However, trustees will now be able to apply to the Commission as well as the courts for relief from personal liability.

The power applies only where trustees have acted honestly and reasonably and ought fairly to be excused. The Commission will still take deliberate breaches of trust very seriously.

In more detail: trustee indemnity insurance

Until now, charities have usually needed the Commission's approval to buy indemnity insurance for their trustees. Trustees now no longer need an explicit power from the Commission or from their governing document before buying such insurance. The Act sets out certain conditions:

- Trustees must satisfy themselves that it is in the charity's best interests to buy indemnity insurance with the charity's money.
- The charity's governing document must not expressly prohibit the purchase of indemnity insurance, but trustees can now buy indemnity insurance where the governing document simply states a general prohibition against personal benefit.

Limitations: Any indemnity insurance policy must exclude some specific areas, mainly in relation to covering costs and fines from trustees acting in bad faith.

Disqualified trustees: Where someone has been disqualified from acting as a charity trustee, the Commission must grant an

application to waive the disqualification after five years, unless there is good reason not to. This applies only to trustees who were disqualified from acting as a trustee because of misconduct or mismanagement in the administration of the charity in England or Wales.

The provisions came into force on 27 February 2007.

Further information on the Commission's website:

- *Charities and insurance*
- *Waiver of disqualification for acting as a charity trustee*
- *Trustee indemnity insurance*

G. What can the Commission do for you?

The Act strengthens the Commission's role in encouraging the better administration of charities. This will prevent charities getting into difficulties in the first place and allows the Commission to help them uphold principles of good governance. In rare and serious circumstances, however, the Commission needs to be able to act quickly and protect charities when things go wrong. The Act gives it a wider range of regulatory powers in such situations.

G1.Resolving problems and better administration

In brief

The Act gives the Commission more flexibility to help charities resolve various situations that can be problematic or burdensome. These situations include how to deal with:

- charitable donations that can no longer be used as intended;
- a charity established for purposes that are no longer relevant to modern society; and
- charities having incomplete or confusing membership records.

In more detail

‘Cy-près’: This is a long-established legal principle used where:

- a charitable donation has been made and the funds cannot be used for the original purposes of the appeal; or
- a charity has been established for purposes which have become out of date and unworkable.

The principle is that any change in the use of the donation or the purposes of the charity must be as ‘near to’ the original purposes as possible. (‘Cy-près’ means ‘near to’ in Norman French.)

‘Failed’ funds: Charities occasionally run appeals that fail to get enough money to meet their original aim. Equally, an appeal may be so successful that there are surplus funds which cannot be used, and which cannot be returned to the donors. In other cases, funds can exist for which there are no longer any beneficiaries. The cy-près doctrine has previously restricted the ability of the Commission and the courts to allow charities to use these ‘failed’ funds in flexible ways.

How it will work: The Act allows the Commission and the courts to take into account current social and economic circumstances when approached by charities seeking more freedom in how they can use these funds. For example, the Commission will consider how effective the new purposes are in the current social and economic circumstances. Charities will be able to use donated money more flexibly when they can't use it as they originally planned, while still honouring the spirit in which the original donation was made. The Act also enables the Commission, as well as the courts, to direct that certain property is to be treated as belonging to donors who cannot be identified.

Out-of-date purposes: The Commission has long been able to make a Scheme to change a charity's purposes where they are no longer workable and where the charity has no power to make the changes itself. The Act liberalises the cy-près doctrine so that modern-day conditions can be taken fully into account when deciding on the new purposes, while preserving the intention behind the charity's original purposes.

In making a Scheme, the courts or Commission must have regard to:

- the spirit of the original gift;
- the desirability of choosing new purposes that are close to the original purposes; and
- the need for the charity to have purposes that are suitable and effective in the light of current social and economic circumstances.

The result should be that any new purposes the Commission agrees will be in keeping with the vision of the charity's founders or the donors and will also enable the charity to operate effectively in the modern world.

The provisions will come into force in early 2008.

Resolving membership disputes: Membership can be an important consideration for some charities. This is especially true where members may vote and may have other constitutional rights. In certain limited circumstances the Commission will use the Act to resolve any disputes about who is or is not a member:

- when the charity in question applies for the Commission's assistance; or
- at the Commission's discretion within the course of an inquiry.

The Commission also has the power to appoint someone to decide the charity's membership, rather than do so itself.

The provisions came into force on 27 February 2007.

The relaxation of publicity requirements for Schemes and Trustee Orders: The Commission has powers to make a Scheme to allow a charity to change the way it carries out its purposes, or how it is run. Before the Act, a charity had to advertise the Scheme at least one month in advance of it coming into effect, usually in the local press. The same applied to some Orders made by the Commission concerning trustees or other individuals, such as those relating to their appointment or removal.

What is in place now: Under the Act, the Commission can already use its discretion in deciding whether publicity for a Scheme or Trustee Order is needed or not. The Commission's policy is to require publicity only if there are good reasons for it. This will remove an administrative burden for many charities.

Applying discretion: Even if the Commission decides that publicity is needed, it can choose the length of notice period and whether publicity must occur in the local area of the charity.

Overall, publicity is likely to be needed less often, and where it is needed, notice periods will be shorter.

The provisions came into force on 27 February 2007.

Further information on the Commission's website:

- *Orders and Schemes*
- *Dealing with representations in response to public notices*

G2. Protecting charities

In brief

The Commission will be able to direct trustees and employees to take specific actions, as well as direct how charity property is used. It will also be able to suspend or remove charity membership from trustees or employees who are already suspended from their position as a trustee or employee.

In more detail

Specific directions: For the Commission to direct the actions of trustees, officers, employees or a charitable corporate body, it must have an inquiry under way. The Commission will intervene if it believes that misconduct or mismanagement has occurred, or if it has concerns about the security or proper application of charity property.

Application of charity property: The Commission can act – without an inquiry under way – if it believes that those owning or controlling the property are not applying it properly for its intended purposes. The Commission can use its power in relation to any property held by or in trust for a charity. The power is subject to conditions. The Commission must not direct an action that is illegal or prohibited by the charity's trusts, or inconsistent with the charity's purposes.

Suspensions from membership: An inquiry must already be under way for the Commission to be able to exercise this power. It may, for example, remove or suspend membership of a charity from a person who has already been suspended or removed from the position of trustee, officer, agent or employee. This would prevent such a person seeking re-election or re-appointment to their former position by virtue of their charity membership.

The provisions will come into force in early 2008.

G3. Wider powers in conducting statutory investigations

In brief

The Act gives the Commission a new power to enter premises to take and seize documents or information. This power is only available in limited circumstances, and is subject to safeguards. The Commission expects to use it rarely.

In more detail

The circumstances: The Commission must first have set up an inquiry. The Commission must also satisfy a Justice of the Peace that there are documents or information on the premises to be searched that are relevant to the inquiry in question, and that if requested these would not be provided, or would be removed, tampered with, hidden or destroyed. If satisfied of these matters, the Justice of the Peace may issue a warrant to the Commission authorising the search and seizure.

The scope of the Commission's actions: It is allowed to act in the following ways:

- enter and search the premises stated in the warrant;
- remove any documents, computer disks or other electronic storage devices which appear relevant to the inquiry;

- prevent such material being interfered with or destroyed;
- keep the documents or devices for as long as it needs to for the purposes of the inquiry;
- take copies of, or extracts from, documents and information on computer disks or electronic storage devices; and
- require people on the premises to explain a document or information or to tell the Commission where it can find relevant documents or information.

Requirements of the Commission: It must enter the premises within one month of the date of issue of the warrant, and at a reasonable time of day. It must make a written record of the entry and seizure and, if requested, provide a copy of that record to the occupier of the premises or their representative. The written record must include certain information, including the names of those conducting the search, and a list of all the documents or devices taken. That record should be made before leaving the premises (unless this is not practicable).

Return of seized items: The Commission can give seized items back either to the person from whom it took them or to any of the trustees of the charity to which they belonged.

The provisions came into force on 27 February 2007.

H. Specific circumstances

This section sets out the new provisions for specific circumstances that charities may face in their work. Some of these are one-off events, such as the introduction of registration requirements for many of the larger ‘excepted’ and ‘exempt’ charities. Some are less commonplace, such as appealing against the Commission’s decisions: the establishment of the Charity Tribunal will make it cheaper and simpler for charities to do so. Other provisions relate to specific activities – transferring property or fundraising, for example – in which charities may be engaged. The Act also introduces a new role for the Commission in checking whether charities and other organisations are fit and proper to carry out public collections.

H1. Excepted and exempt charities: what's changed?

The short answer

Charities that were 'excepted', and some that were 'exempt' from registration before the Act was passed, will have to register if their gross annual income exceeds £100,000. The Act also clarifies how exempt charities are to be regulated in future.

In more detail: excepted charities

Registration of excepted charities: Over the years, some groups of charities – such as Boy Scout and Girl Guide charities, and various religious charities – have been excused from registering with the Commission although they have been subject to its jurisdiction. The Act now requires those with an annual income of more than £100,000 to register with the Commission and to fulfil the resulting obligations.

Annual income of £100,000 or less: These charities will continue to be excepted and need not register with the Commission, although this will be reviewed in five years' time.

Purpose of the change: To ensure better accountability and regulation for the organisations concerned.

In more detail: exempt charities

Registration of exempt charities: Historically it was considered that public bodies other than the Commission adequately monitored certain charities' compliance with basic charity law. This is why some groups of charities, such as further education corporations, foundation and voluntary aided schools, most universities and some museums, were termed 'exempt'. They were outside the Commission's jurisdiction and

were not even allowed to register, although they did have to comply with charity law.

The Act aims to ensure that these charities are properly monitored. It distinguishes between those exempt charities that have a defined 'principal regulator' and those ones that do not.

Exempt charities that will be supervised by a 'principal regulator': These charities will not have to register with the Commission. The principal regulator will be an existing body that currently supervises the charity for other functions but will take on additional responsibility for monitoring charity law compliance. A good example of a principal regulator is the Housing Corporation, which regulates housing associations in England. However, at the request of the relevant principal regulator, the Commission will be able to investigate exempt charities, and they will be subject to the Commission's protective powers.

Where it is not possible to identify a principal regulator: Such exempt charities will no longer be exempt and will become excepted charities, falling within the full jurisdiction of the Commission, including its protective and investigative powers. However, only those (previously exempt) charities with an annual income of over £100,000 will have to register.

Next steps: The Office of the Third Sector is working with principal regulators to agree how the new arrangements will work and to make sure that the regulators have the powers they need for this role.

These changes for exempt and excepted charities are not expected to come into force before 2008. The charities themselves, the proposed principal regulators of exempt

charities and the Commission need time to prepare for the changes.

H2. Small charities and the transfer of property

In brief

The Act updates and extends existing provisions to make it easier for the trustees of a small, unincorporated charity to transfer its property to another charity. The Act will increase the number of charities that can benefit from these provisions by raising the upper annual income limit to which they apply from £5,000 to £10,000.

In more detail

Currently some very small unincorporated charities can transfer all their property to one or more charities by making a resolution, which the Commission must approve. This is simpler than approaching the Commission to make a Scheme to effect the transfer. This route will be simplified even further and will become available to charities with an annual income below £10,000, although certain safeguards will remain.

Scope: The Act also will allow property to be transferred to more than one other charity. The trustees must consider that such a transfer is necessary to advance the purposes for which they hold the property. Also, in the case of unrestricted property, the recipients must have at least one purpose that is substantially similar to those of the charity making the transfer (different requirements apply to property that is permanent endowment – see below).

Obtaining the Commission's consent to a transfer:

Currently the Commission must give its consent before a transfer can take place. The new regime is simpler. If the Commission does not object to the transfer within 60 days of

receiving the charity's resolution, it is deemed to have consented. However, the 60-day period can be extended if the Commission requires public notice of the resolution or further information.

If the charity holds permanent endowment: 'Permanent endowment' means property (such as land, buildings, investments, cash or other property) that trustees may not spend as if it were income, or sell to raise cash. There are special rules about these provisions for charities holding permanent endowment. Unlike the regime for unrestricted property, capital may only be transferred to recipients who meet at least one of the following criteria:

(i) Where the transfer is to two or more charities, then:

- taken as a group, they have purposes that are substantially similar to all of the purposes of the charity making the transfer; and
- taken individually, each has purposes that are substantially similar to one or more of the purposes of the charity making the transfer.

(ii) Where the transfer is to a single charity, then the recipient must have purposes that are substantially similar to all of the purposes of the charity making the transfer.

The Commission will publish guidance about the division of permanent endowment between two or more recipient charities.

The provisions will come into force in early 2008.

H3. Register of mergers

In brief

A technical problem for charities that merge is possible uncertainty over what to do with legacies and other gifts intended for charities that have 'disappeared' as a result of the merger. The Act requires the Commission to set up a register of mergers that will (in most cases) overcome this problem. The Act will also simplify the process of transferring property, including land, in these cases.

In more detail

The register of mergers: This will help when a merger occurs in which either:

- one charity transfers all its property to another and ceases to exist; or
- two or more charities come together, both cease to exist and instead a new charity is formed which holds their combined property.

The Commission will create the register to record certain details of every merger notified to it and will make the register available to the public.

The benefits: Although registering a merger is not compulsory, it does allow for gifts to a charity to be automatically transferred to the new, merged charity. This is particularly useful where there are legacies or other gifts that were left to the charities that 'disappear' as a result of the merger. This provision helps to honour the spirit of legacies and gifts made to one of the merging charities. Using a 'vesting declaration' simplifies the transfer of title to land belonging to any of the charities involved; in such cases it will be compulsory to notify the Commission to register the merger.

The provisions will come into force later in 2007.

H4. Spending from endowment funds

In brief

Smaller unincorporated charities (those with an annual income of £1,000 or less, or an endowment with a market value of £10,000 or less) will find it easier to spend permanent endowment that is not land held on trusts for specific uses. Larger unincorporated charities, however, will only be able to do so in particular circumstances and must have the Commission's agreement.

In more detail

Permanent endowment: This means property (such as land, buildings, investments or cash) that trustees may not spend as if it were income. Currently, if a charity is permanently endowed, it can spend the income generated from the endowment but cannot easily spend the endowment fund itself. The Act will extend the circumstances in which a charity can spend permanent endowment as if it were income.

Small unincorporated charities: The above rules on spending permanent endowment will apply to unincorporated charities that either have an annual income of £1,000 or less, or where the market value of the endowment fund in question is £10,000 or less. The Act will allow the trustees in these circumstances to resolve to spend the permanent endowment without needing the Commission's consent.

However, charities must first satisfy themselves that the purposes for which the endowment fund was created could be more effectively carried out by spending some or all of the capital. This does not apply to land held on trusts for specific uses.

Larger unincorporated charities: If a charity is unincorporated with an annual income in the last year of over £1,000 **and** the market value of the permanent endowment is over £10,000, slightly different rules will apply. It may spend permanent endowment, but to safeguard the interests of donors it must first obtain the Commission's consent.

In deciding whether or not to allow a charity to spend the endowment, the Commission must take into account any evidence of the donor's wishes, as well as any change in the charity's circumstances.

The new rules do not apply to land held on trusts for specific uses.

The provisions will come into force in early 2008.

H5. Mortgaging charity property for a loan or grant

In brief

Trustees no longer need the consent of the courts or of the Commission to allow land belonging to their charity to be mortgaged, provided that they obtain and consider proper written advice.

In more detail

The conditions: Previously, trustees needed the authority of the courts or of the Commission to grant a mortgage over their charity's land. An exception was where trustees were granting the mortgage as security for the repayment of a specific loan, and had obtained and considered proper written advice.

Scope: The Act extends the range of mortgages for which trustees do not need the consent of the court or the Commission. They may now, without consent, grant mortgages to secure the repayment of a grant, and to secure the discharge of other sorts of obligation as well as to secure specific loans. Also, they no longer need consent to grant mortgages to secure any future loan, grant or obligation that they as the lender might make to the borrower, as well as the loan, grant or obligation under immediate consideration.

Under the rules governing mortgages for which consent is not required, trustees must comply with the following requirements:

(i) In the case of a mortgage to secure a loan or grant they must obtain and consider proper advice given to them in writing on whether the proposed loan or grant:

- is necessary for the particular course of action;
- is appropriate in terms of the status of the charity; and
- has interest and other charges that are reasonable and that the charity can afford to pay.

(ii) In the case of a mortgage to secure meeting the demands of any other proposed obligation, they must obtain and consider proper advice on whether it is reasonable for them as trustees to take such an action, having regard to the charity's purposes.

The provisions came into force on 27 February 2007.

Further information on the Commission's website:

- *Disposing of charity land*
- *Borrowing and mortgages*
- *Disposals of charity interests in property*

H6. Fundraising

In brief

Currently, professional fundraisers and commercial participators must make 'solicitation statements' when raising money for charities. The Act tightens up how these statements must be made. It also requires those directly involved in the running of a charity – such as its trustees or employees – to make a simple statement when collecting in public for that charity.

The Act will establish a comprehensive and unified scheme for the regulation of public charitable collections. The Commission gains a new role in checking whether organisations are fit and proper to carry out public charitable collections. In general, organised collections must be licensed, although there is an exemption for short-term collections that operate locally and on a small scale.

In more detail: solicitation statements

Professional fundraisers and commercial participators must make a detailed statement, which must include information about for whom they are collecting money or donations and how much their organisation is being paid for the appeal. This is called a 'solicitation statement'. Trustees or employees must explain their role in the charity when collecting in public places. Volunteer fundraisers need not make a statement.

Definitions: A 'professional fundraiser' is a person or business that is paid to raise money for charities. A 'commercial participator' is not a fundraising business, but a body that in the course of its normal business activities takes part in a promotional venture with a charity, or for a charitable cause, to raise money for it. The law already requires charities to have a contractual arrangement when they work with professional fundraisers or commercial participators.

Volunteers, trustees, officers, employees etc of a charity:

The Act does not require volunteer fundraisers to make a solicitation statement. However, when fundraising in a public place or door to door, the Act will require trustees, officers and employees of a charity to state:

- for whom they are fundraising;
- if there is more than one institution, the proportions in which the institutions are respectively to benefit;
- the fact that they are an officer, employee or trustee of the institution; and
- that they are paid for fundraising.

Professional fundraisers: In appealing on behalf of a charity, charities or charitable cause for money or other property, professional fundraisers will need to indicate clearly:

- for whom they are fundraising;
- if there is more than one institution, the proportions in which the institutions are respectively to benefit;
- how payment to them is calculated; and
- how much they will be paid in connection with the appeal, or as accurate an estimate as is reasonably possible in the circumstances.

Commercial participators: In carrying out a promotional activity for a charity, charities or charitable causes, for money or other property, commercial participators will need to indicate clearly:

- which charities or charitable causes will benefit from the promotional venture;
- if there is more than one institution, the proportions in which the institutions are respectively to benefit; and

- how much of the proceeds from the promotional venture will go to the charity, charities or charitable cause(s), or give as accurate an estimate as is reasonably possible in the circumstances.

Further work: The Office of the Third Sector and the Commission will work with the sector to develop practical guidance in order to help charities, professional fundraisers and commercial participators meet the new requirements.

The provisions will come into force later in 2007.

In more detail: public charitable collections

Types of collection to be covered by the new licensing scheme: All collections for charitable, philanthropic or benevolent purposes that are conducted either door to door or in a public place will be covered, including collections of cash, direct debits or standing orders, and goods.

Types of collection not covered by the new licensing scheme: Collections that take place inside shops or other business premises, churches, village halls, people's homes and other private places are not covered; nor are static collection tins, and collections for non-charitable purposes.

Public places: The Act refers to collections in 'public places'. This new description will extend to some privately owned land to which the public has unrestricted access, such as station ticket halls and supermarket forecourts.

Local, short-term charitable collections: The Act allows an exemption for these. The precise definition of what types of collection can qualify as a local, short-term collection will be set out in regulations following consultation. The spirit of the Act is that infrequent, locally organised collections involving

volunteers, such as carol singing, or a collection for a school jumble sale, will not be burdened by the licensing scheme. These exempt collections need not be licensed, but the organiser must let the local authority know about the collection beforehand.

Licensing: Licensing under the new scheme will have two stages.

Stage 1: Anyone proposing to organise public charitable collections (other than exempt ones – see above) must apply to the Commission for a public collections certificate. Where a certificate has been issued, the Commission will be able to suspend or withdraw it, or attach further conditions to it. The certificate will be valid for up to five years before needing renewal. The Commission may refuse to issue a certificate on certain specified grounds, for example that the applicant has failed to provide necessary information, or that he or she has been convicted of certain offences.

Stage 2: This depends on the type of collection.

Door-to-door collections: If the first stage has been successful, the organiser will be able to conduct door to-door collections in any area in England and Wales, provided they notify the relevant local authority in advance. They will not need a specific permit.

Collections in a public place: If the first stage has been successful, the applicant can approach the local authority for a permit for a public place collection. The permit allows collection at certain times in certain public places in that local authority area. The local authority's decision to issue a permit or not must be based solely on whether the collection would cause a public

nuisance. In making this decision the local authority will consider whether there is sufficient 'capacity' in the nominated area and this will depend on what other collections are being conducted in or around that location and at which times.

The licensing scheme will not come into force before 2009. The Office of the Third Sector and the Commission need to do more detailed work in preparing and consulting on regulations and guidance. In addition, the Commission must be equipped to take on its new role.

H7. The Charity Tribunal

In brief

Currently, charities that wish to appeal against the Commission's legal decisions only have the option of going to the High Court. This can be prohibitively expensive and complicated, particularly for small charities. The Act will establish a Charity Tribunal as a first level of appeal, which will be cheaper, more convenient and less formal. This will allow smaller charities an accessible means of addressing grievances. Access to the High Court will still be possible on appeal against a decision of the Charity Tribunal.

In more detail

The Tribunal's scope: The Tribunal will hear applications to review some matters which previously would have been subject to the judicial review procedure, and will hear appeals against the Commission's legal decisions, which would previously have been subject to an appeal to the High Court. It will be able to consider decisions that the Commission did take, and also some decisions that it chose not to take. If a charity is unhappy about a decision the Commission has taken, it should first discuss this with the Commission, which will carry out an internal decision review. If after this process the charity is not satisfied, it will be able to appeal to the Tribunal. Cases may be

brought against the Commission by charity trustees or other parties affected by its decision, as well as by the Attorney General. The Commission will be the respondent.

The Tribunal may consider matters referred to it by the Attorney General, or, with the Attorney General's consent, by the Commission. These would generally be questions about the operation or application of a particularly complex area of charity law. The Attorney General will also have the power to intervene in a case before the Tribunal, where s/he is not already a party. This power may well be exercised in complex cases and may help to relieve the party bringing the appeal of some legal costs.

The Tribunal's work: The Tribunal's role will be to make judgments about the legality of the Commission's actions in exercising its statutory powers to regulate charities. The Tribunal will have various powers that it can exercise if it finds that the Commission has acted unlawfully. For example, it may decide to quash a decision if it finds that the Commission has not followed the correct process, and to replace it with its own decision. Or the Tribunal may direct the Commission to take the decision again, following the correct process. In considering appeals, the Tribunal will need to consider the matter and look at any additional evidence that may have come to light.

Costs and compensation: The Tribunal will be able to quash the Commission's decisions and award costs in certain circumstances. It will not be able, however, to award compensation.

Rules: The Lord Chancellor will make rules which will provide more detail as to the practice and procedure to be followed in proceedings before the Tribunal.

Appeals to the High Court: If a charity takes part in the legal proceedings being heard by the Tribunal, it may appeal to the

High Court against a decision of the Tribunal. It must first have obtained permission from the Tribunal or, if refused by the Tribunal, from the High Court. In general it may bring such an appeal only on the grounds that the Tribunal has made a mistake in law (for example in how it has interpreted the law) and not because it has made a mistake as to facts. So it will not usually be appropriate to present fresh evidence to the High Court.

The Commission's conduct and service: The Tribunal will not consider complaints about the Commission's general conduct and service, which will continue to be dealt with through the route of the existing complaints procedure. This allows for appeal to an independent complaints reviewer (the final stage of the Commission's complaints procedure).

The provisions will come into force in early 2008.

I. About the Commission

Since the previous Charities Act was passed in 1992, the Commission has developed its role as an effective, modern regulator. The Act supports this by establishing a renewed constitutional framework which clarifies its objectives and how it should operate. The Commission will be led by a larger, more diverse board that can better reflect the sector it works with.

11. The Commission's role

In brief

The Act defines the Commission's objectives and functions, and gives it some general duties which are meant to guide it when performing its functions.

In more detail

The objectives: The five objectives are set out below:

1. **The public confidence objective:** To increase public trust and confidence in charities.
2. **The public benefit objective:** To promote awareness and understanding of the operation of the public benefit requirement.
3. **The compliance objective:** To encourage charity trustees to comply with their legal obligations in exercising control and management of the administration of their charities.
4. **The charitable resources objective:** To promote the effective use of charitable resources.
5. **The accountability objective:** To make charities more accountable to donors, beneficiaries and the public.

The general functions: The Commission will:

- decide whether institutions are, or are not, charities;
- encourage and facilitate the better administration of charities;
- identify and investigate when charities are being mismanaged or misused and take action to put things right or to protect charity property;
- carry out its new role in issuing public collections certificates;
- maintain an accurate and up-to-date register of charities, and use this and other information to support its work and help achieve its objectives; and

- provide information and advice or make proposals to Ministers on matters relating to its objectives and functions.

The duties: In its work the Commission must comply with certain duties, as follows:

- The Commission must, as far as is practicable, act in a way which is compatible:
 - with its objectives and which is appropriate for achieving those objectives; and
 - with encouraging charitable giving and voluntary participation in charity work.
- The Commission must, in appropriate cases, consider the need for charities to be able to innovate or to support innovation which affects charities generally.
- The Commission must have regard to best regulatory practice. This includes applying the principles that regulatory activities should be proportionate, accountable, consistent and transparent, and targeted only at cases in which action is needed.
- As an organisation, the Commission must have regard to the principles of good corporate governance and to the need to use its resources in the most efficient, effective and economical way.

The main provisions came into force on 27 February 2007.

I2. The Commission's status and structure

In brief

The Commission has become a new body corporate, with an expanded board. There is a clear statement of its independence from Ministers.

In more detail

An expanded and more diverse board: The Act allows the Commission to recruit up to four new non-executive board members. The Act also requires that the board as a whole has a broad range of knowledge and experience of the operation and regulation of charities and of the legal framework in which it works. At least one of the board members must have specialist knowledge of conditions in Wales. This will help to ensure that the board reflects the diversity of the charitable sector.

Open governance: Since 2005 the Commission has, on a voluntary basis, held an annual general meeting (AGM) that is open to the public. The Act makes it a statutory requirement that it must hold a public AGM during which its annual report to Parliament is discussed.

Accountability to Parliament: The Commission must report annually to Parliament on its work, its progress in meeting objectives, the performance of its general duties and the management of its affairs.

Safeguard: The Commission's independence from Ministers and government departments is an important element in contributing to public confidence in charities. We know that charities themselves value it highly too. The Act preserves the Commission's independence as a non-ministerial government department.

The main provisions came into force on 27 February 2007.

J. Glossary

This section explains what some of the technical terms used in this booklet mean.

Auditor means a person who is a registered auditor and is regulated by a recognised supervisory body. Section 42(2) of the Companies Act 1985 covers this in more detail.

Body corporate is the legal term for a corporation. A corporation is a legal entity that, although formed by individuals, exists completely separately from them.

Cy-près is a long-established legal principle applying to circumstances where a charitable donation has been made, or where a charity has been established, for purposes that are no longer workable. Any change in the use of the donation or the purposes of the charity must be as 'near to' the original purposes as possible. (Cy-près is Norman French for 'near to'.)

Excepted charity means a charity that need not register with the Commission either because of regulations made by Ministers or by an Order made by the Charity Commission. Under the Act, the larger among the excepted charities (with an annual income over £100,000) will have to register with the Commission when the relevant part of the Act is implemented.

Exempt charity means a charity included in Schedule 2 to the Charities Act 1993 and any other charities declared exempt by legislation. They are for the most part groups of institutions such as universities, museums and housing associations. Until the relevant parts of the 2006 Act come into force, exempt charities are not allowed to register with the Commission. There will be new requirements for registration, which are set out in more detail in this booklet (see H1), meaning that some of the larger ones among them will no longer be exempt. Whether this will apply to a previously exempt charity will depend first on whether a principal regulator has been identified for the charity and, second, on the level of its annual income.

Governing document means a legal document setting out the charity's purposes and, usually, how it is to be administered. It may be a trust deed, constitution, Memorandum and Articles of Association, conveyance, will, Royal Charter, Scheme of the Commission or other formal document.

Incorporated charity means a charity that is also a company or has a similar legal status as a corporate entity in law.

Independent examiner means a person independent of the trustees who is reasonably believed to have the necessary ability and practical experience to make a competent and impartial examination of the charity's accounts. Independent examination is a less onerous form of scrutiny than an audit, but charities should refer to the 1993 Act for further guidance and, if in doubt, seek accountancy advice.

Inquiry means an inquiry into a charity or charities opened by the Charity Commission under Section 8 of the 1993 Act.

Land means land in England and Wales with or without buildings, and includes any estate or interest in land, such as a lease or right of way.

Objects are the description in a charity's governing document of the charitable purposes that the charity is to achieve.

Permanent endowment means property (land, buildings, investments or cash) that may not be spent by the trustees as if it were income.

Provision means a clause in a legal instrument providing for a particular matter.

Purpose means the overriding reason for the charity to exist. It is what a charity aims to achieve from its work. A charity's purposes are usually described in its governing document in the 'objects clause'. To be a charity, an organisation must have purposes, all of which are charitable.

Scheme means a legal document that amends, replaces or amplifies the trusts of a charity. A Scheme can be made by the Commission or courts.

Trustee means a charity trustee. Charity trustees are the people who are responsible for the general control of the management of the administration of the charity. In the charity's governing document they may be called trustees, managing trustees, committee members, governors or directors, or they may be referred to by some other title.

Unincorporated charity means either a trust or an association. 'Unincorporated' means that such organisations are not companies: they do not have a separate legal identity and therefore cannot enter into contracts in their own name. The individual charity trustees would be named in a contract, and would be responsible for meeting its terms and liabilities. The term 'incorporation' is often used to describe the trustees' establishment of a charitable company to take over the unincorporated charity's operations. There are various pros and cons to incorporation, and trustees should seek legal or accountancy advice, or both, before proceeding.

A **vesting declaration** means a document that transfers the title to land and other property from one charity (or set of charity trustees) to another charity (or set of charity trustees).

Appendix

This section signposts sources of further useful information.

The Charities Act 2006, with the explanatory notes that accompany it, is available on the website of the Office of Public Sector Information at www.opsi.gov.uk. The Charities Act 1992 and Charities Act 1993 are also available on this website. Hard copies can be bought from The Stationery Office.

You are encouraged to use the Commission's website at www.charitycommission.gov.uk (tel: 0845 300 0218) to keep up to date with developments, as well as to find out more about the Commission's role as the regulator of charities in England and Wales. Relevant guidance about the Act will be published there.

The Office of the Third Sector implementation plan, which sets out when the various provisions of the Act will come into force, can be found at www.cabinetoffice.gov.uk/thirdsector. Other information about charity law and the Act is on the same site.

Information about the Charities Bill can be found on the UK Parliament website at www.publications.parliament.uk.

Several other sources give further guidance on matters relating to the implementation of the Act. Listed here are some that may help trustees.

Association of Chief Executives of Voluntary Organisations (ACEVO)

www.acevo.org.uk

Tel: 0845 345 8481

ACEVO is the professional body for the third sector's chief executives.

Charity Finance Directors' Group (CFDG)

www.cfdg.org.uk

This is the membership organisation for those working in charities who have responsibility for financial management.

Charity Law Association

www.charitylawassociation.org.uk

The Charity Law Association is established with the aim of enabling those who advise on or use charity law to meet, exchange ideas and intelligence, and use their experience and expertise for the benefit of the charity sector.

Charity Trustee Networks (CTN)

www.trusteenet.org.uk

Tel: 01483 230280

Charity Trustee Networks' main objectives are to promote the efficiency and effectiveness of charities by improving their governance through trustee networks and by promoting the education of trustees in the principles and practice of trusteeship.

Companies House

www.companieshouse.gov.uk

Tel: 0870 33 33 636

Companies House incorporates and dissolves limited companies, and stores information delivered under the Companies Acts.

In-House Charity Lawyers Group

www.cigroup.org.uk/charity.asp

The In-House Charity Lawyers Group is run by and for in-house lawyers in charities, enabling its members to meet, network, and exchange ideas, experiences, resources and best practice.

Institute of Fundraising

www.institute-of-fundraising.org.uk

This is the professional body representing and supporting fundraisers.

Her Majesty's Stationery Office (HMSO) (now part of the Office of Public Sector Information)

www.opsi.gov.uk

National Council for Voluntary Organisations (NCVO)

www.ncvo-vol.org.uk, www.askNCVO.org.uk

Freephone help desk: 0800 2 798 798, textphone 0800 01 88 111

NCVO is the umbrella body for voluntary organisations in England. Its website includes an online gateway to voluntary sector information. askNCVO is a source of guidance for trustees on a wide range of practical and legal issues.

Northern Ireland Council for Voluntary Action (NICVA)

www.nicva.org

NICVA is the umbrella body for voluntary, community and charitable groups in Northern Ireland. It provides over 1,000 affiliated members with information, advice and training on a wide range of issues, from management consultancy and finance to policy development and lobbying.

Scottish Council for Voluntary Organisations (SCVO)

www.scvo.org.uk

SCVO is the umbrella body for voluntary organisations in Scotland.

Wales Council for Voluntary Action

www.wcva.org.uk

WCVA's interactive website offers information for and about the voluntary sector in Wales.

In due course, legal firms and publishers will produce guides to the Act. You should check the trade press for further information about these.

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